

**CITY OF MORGAN HILL
SPECIAL AND REGULAR CITY COUNCIL AND
REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – DECEMBER 20, 2006**

CALL TO ORDER

Mayor/Chairman Tate called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Tate
Absent: Council/Agency Member Lee

DECLARATION OF POSTING OF AGENDA

Municipal Services Assistant Rice certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Kern announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 1

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Moniz v. City of Morgan Hill
Case Number: County of Santa Clara No. 1-05-CV-053742
Attendees: City Manager; City Attorney; Special Counsel Mark Strombotne

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Tate opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Tate adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Mayor/Chairman Tate reconvened the meeting at 7:07 p.m. He announced that the Council/Redevelopment Agency would reconvene to closed session following the conclusion of the meeting's agenda items.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Kern announced that no reportable action/events were taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATION

Dan Ehrler, Executive Director of the Chamber of Commerce, introduced Wendy Sarsfield, PG&E Government Relations Director; and Jose Rios, PG&E Account Manager who were instrumental in the coordination of a central coast marketing team.

Ms. Sarsfield presented the City of Morgan Hill with a check in the amount of \$4,000 for the Economic Development PG&E Grant submitted this year. She indicated that she and Mr. Rios were pleased to see the City of Morgan Hill successful in its grant application. She announced that PG&E funded 63 grants for a total of \$379,000 and that over the past five years, PG&E has funded over 260 organizations for approximately \$1.3 million. She was pleased to see the grant funding is going locally to a great partnership, and that the City of Morgan Hill and the Morgan Hill Chamber of Commerce have come together to implement a great program. She indicated that PG&E recently sited a new regional management center in Morgan Hill, and that PG&E staff had a great experience working with Director of Business Assistance & Housing Services Toy and his staff as they did a great job in assisting them through the process. She thanked Mr. Toy and his staff for their assistance.

Mr. Rios informed the Council that PG&E staff had a great experience in working with Mr. Ehrler and with the City's efforts to perform economic development regionally. He said that PG&E believes that it is easier to accomplish more items in partnership than to accomplish them individually. He stated his appreciation for Mr. Ehrler's efforts in working with PG&E staff.

PROCLAMATIONS

RECOGNITIONS

CITY COUNCIL REPORT

Mayor Tate reported on how Council meetings are conducted and the process used to run these meetings. He explained what the Council tries to do with the various parts of the Council meeting in order to give citizens an idea of what will take place in the meetings. He views the Council meeting as having five separate parts: 1) closed sessions, 2) proclamations, recognitions, presentations, reports (e.g., Council, City Manager, City Attorney, Council Committee reports, etc.); 3) opportunity for public comments for items not appearing on the evening's agenda; 4) consent calendar; and 5) agenda items.

City Attorney Kern addressed closed sessions; indicating that the Government Code provides specific purposes where a City Council can go into closed sessions (e.g., attorney-client privilege conversations that typically relate to whether or not there is existing litigation or potential litigation; negotiations on

real property matters; and personnel issues). When decisions are finally made on any closed session items and/or litigations are resolved, these items are reported out so that the public is informed about the end results. She said that in the case of real estate transactions, before the actual document is signed and an agreement is made, the recommended action would be taken in public in order to provide the public with the opportunity to express their comments on the matter. The Council would then vote on the matter in public. She clarified that the City is required to indicate on the agenda exactly what matters are going to be addressed in closed session. Oftentimes, closed sessions are conducted prior to the public meeting. Therefore, the public tuning in during the Council meeting may not have heard what the closed session items were about. She announced that closed sessions were discussed this evening, as noted above. When the Council reconvenes from closed session, the Council asks if there is reportable action taken; oftentimes, there is no reportable action to report because the closed session items may not have come to a resolution.

Mayor Tate indicated that the public has the opportunity to address the Council and comment on the closed session items before the Council goes into closed sessions. He continued with his presentation of how the meetings are conducted. He addressed public comments for items not on the evening's agenda. He informed the public that the Council cannot act on items brought forward to the Council that are not listed on the agenda. However, the Council can request that the item be placed on a future agenda and act upon the item at that time. He stated that consent calendar items are ones that are routine in nature that the City does not believe will be contested, and can be acted upon with one motion. However, an item can be removed from the Consent Calendar by a citizen or the Council. He indicated that henceforth, there will be announcements of some of the consent calendar items found to be significant prior to voting on the Consent Calendar (highlighting some of the items on the Consent Calendar). Although some Consent Calendar items may not be contested, there may be items the Council would like to inform the citizens about. He addressed the regular agenda items that include required public hearing items and other business items. He stated that it is the Council's policy to allow the public to address it on any item on the agenda. He said that the Council will try to make the meeting process more efficient and informative to the public. Therefore, he will make an effort to announce what will be taking place, what is taking place, and what action(s) were taken.

Mayor Tate indicated that he will be requesting that speaker cards be submitted prior to proceeding with an agenda item. A staff report will be presented followed by Council questions that may be technical in nature or requests for clarification. The floor will then be opened to public comment, followed by any further clarifications needed. Soon after the close of the public comment period, the Council will try to invite a motion in order to allow discussion/debate on a specific course of action. This may result in opportunities to amend or offer substitute motions. He said that the Council wants to make sure that everyone understands the motion; followed by discussion and debate. It is his hope that the discussion will be focused, as much as possible; giving Council members the opportunity to express their opinions and provide their input, while being efficient. A vote will be taken following Council discussion, and that once a decision is made, there will be an announcement of the results of Council actions in order to inform the public of all actions taken by the Council as it moves forward.

CITY COUNCIL COMMITTEE REPORTS

Council Member Carr indicated that the Public Safety & Community Services Committee met this evening prior to closed session. He said that the Committee was wrapping up the end of the calendar year. He said that the Committee will be bringing back a couple of items to the Council early next year.

in order to receive Council direction on a couple of proposed ordinances: 1) social host regulations, and 2) dangerous dogs. He informed the Council that these are two issues the Committee has been addressing for some time. He indicated that the Committee requested that staff prepare a “year in review” from the Committee. He stated that City Manager Tewes identified items the Committee discussed and what action was taken on these items. The Committee had a discussion this evening about how these items came about (e.g., Council requests, Council goals, public initiated, committee initiated), and their results. He said that it was enlightening to see what has been done by this Committee over the past twelve months. He said that a few significant items were accomplished and there were others that are not yet completed. He felt that a “year in review” report would be valuable information for the Council as it heads toward its retreat in January 2007. He suggested/requested the other Council Committees go through a similar process of having a “year in review” report prepared that indicates the activities undertaken by the Committees over the past year to allow Council discussion at the upcoming retreat.

Mayor Tate agreed that a “year in review” from the Council Committees would be good to have for the retreat and requested that these be prepared.

CITY MANAGER REPORT

City Manager Tewes indicated that from time to time, under the City Manager’s report, he would be presenting two types of information: 1) updates on administrative matters; and 2) comments regarding items on the agenda. He reported that there are two items on the Consent Calendar that he wanted to make sure the Council and community members were familiar with. 1) The Council expressed interest in the Mayor’s suggestion that Mr. Alan Clark be appointed to the Parks & Recreation Commission. He indicated that the recommendation of appointment of Mr. Clark is on the agenda this evening. 2) He indicated that the recommended action under item 15 is to authorize sending a letter to the Association of Bay Area Government (ABAG). He stated that under State Law ABAG is required to allocate regional housing needs every so often. Under State law, each general purpose government in Counties and Cities are required to adopt a Housing Element on how the jurisdiction will meet regional housing needs. He said that the letter being requested be authorized by the Council is consistent with prior Council policies; therefore, the item is on the Consent Calendar. He informed the Council that the report and the proposed letter have been reviewed by the Planning Commission; indicating that the Planning Commission concurs with the recommendation. The letter states that the City of Morgan Hill believes it can meet its total housing production need in Morgan Hill, but encouraged ABAG to consider a methodology toward the allocation of affordable housing. This methodology should recognize communities that can allow higher residential density and have greater access to transit be those agencies that have a higher proportion of affordable housing allocation. 3) Consent Calendar Item 25, is the approval of the December 6, 2006 Joint Regular City Council, Redevelopment Agency, and Morgan Hill Wastewater Facilities Financing Corporation meeting minutes. He pointed out that the minutes were not included in the Council’s agenda packet, but have been placed before the Council on the Dais. 4) Item 26 is a public hearing; indicating that staff has a short supplemental report. He said that a great deal of information was included in the agenda packet. However, the supplemental report revises the recommendation to address a concern that arose at the Planning Commission meeting. He stated that all of the information will be discussed by City staff, and will be the subject of the public hearing the Council will be conducting later this evening.

CITY ATTORNEY REPORT

City Attorney Kern stated that she did not have a report to present.

OTHER REPORTS

Mayor Tate informed the public that the City posts the Council/RDA agenda fascias on Friday evenings outside City Hall and on the City's website (www.morganhill.ca.gov). He said that citizens can find out what is scheduled before the Council by visiting the City's website.

City Council Action

CONSENT CALENDAR:

Mayor Pro Tempore Carr requested that item 15 be removed from the Consent Calendar.

Council Member Sellers requested that items 17, 19, 20, and 21 be removed from the Consent Calendar as he recused himself from the introduction of these ordinances scheduled for adoption. Therefore, he would be recusing himself from voting on these four items this evening.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Lee absent, **Approved** Consent Calendar Items 1-14, 16, and 18 as follows:*

1. **APPOINTMENT TO FILL A VACANCY ON THE PARKS & RECREATION COMMISSION**
***Action:** **Considered** and **Ratified** the Mayor's Appointment of Alan Clark to Serve an Unexpired Term on the Parks & Recreation Commission; Term Ending April 1, 2007.*
2. **2006-2007 HAZARDOUS VEGETATION PROGRAM**
***Action:** **Adopted** Resolution No. 6073, Declaring Weeds and Brush to be a Nuisance and Setting January 17, 2007 as the Date for the Public Hearing Regarding Weed Abatement, and June 6, 2007 as the Date for the Public Hearing Regarding Brush Abatement.*
3. **NEW LIBRARY PROJECT – NOVEMBER CONSTRUCTION PROGRESS REPORT**
***Action:** **Information** only.*
4. **NOVEMBER 2006 FINANCE & INVESTMENT REPORT - CITY**
***Action:** **Accepted** and **Filed** Report.*
5. **55+ SENIOR PROGRAMMING AT CENTENNIAL RECREATION CENTER**
***Action:** **Authorized** the Senior Advisory Commission to Move Forward with Proposed Plans to Increase 55+ Senior Programming at the Centennial Recreation Center.*

6. **AB1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2005-2006**

Action: Made the Following Findings Regarding Development Impact Fees Held by the City at June 30, 2006, as Described in Exhibit A, as follows: 1) a) Identified the Purpose of Each Fund; b) Demonstrated Reasonable Relationship Between Each Fee and Purpose for Which it is Charged; c) Identified All Sources of Funding Anticipated to Complete Financing for all Incomplete Improvements; d) Designated Appropriate Dates on Which Funding for Projects is Expected to be Received; and 2) Accepted and Filed the AB1600 Development Impact Fee Report for the 2005-2006 Fiscal Year.

7. **USED MOTOR OIL CONTAINER PURCHASE**

Action: Authorized the City Manager to Issue a Purchase Order for the Purchase of Used Motor Oil Containers from Weisenbach Specialty Printing.

8. **ACCEPTANCE OF COYOTE CREEK TRAIL CONNECTION PROJECT**

Action: 1) Accepted as Complete the Coyote Creek Trail Connection Project in the Final Amount of \$31,937; and 2) Directed City Clerk to File the Notice of Completion with the County Recorder's Office.

9. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9601, MORGAN LANE PHASE IV**

Action: 1) Adopted Resolution No. 6074, Accepting the Subdivision Improvements Included in Tract 9601, Commonly Known as Morgan Lane Phase IV; and 2) Directed City Clerk to File a Notice of Completion with the County Recorder's Office.

10. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9586, BARRETT PLACE**

Action: 1) Adopted Resolution No. 6075, Accepting the Subdivision Improvements Included in Tract 9586, Commonly Known as Barrett Place; and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.

11. **APPROVAL FOR SUBDIVISION IMPROVEMENT AGREEMENT FOR LANDS OF AHMADI (APN 817-59-052)**

Action: Authorized the City Manager to Sign a Subdivision Improvement Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.

12. **REIMBURSEMENT FOR MONTEREY ROAD MEDIAN IMPROVEMENTS BY KEN MORENO**

Action: 1) Appropriated \$77,305 from the Current Year Un-Appropriated Traffic Impact Fee for this Reimbursement; and 2) Authorized Reimbursement of \$77,305 for Construction of Monterey Road Median Improvements by Ken Moreno.

13. **APPROVE PURCHASE ORDER FOR SEWAGE SUBMERSIBLE PUMPS AT "F" AND "G" LIFT STATIONS**

Action: Approved Purchase of Three Sewage Submersible Pumps in the Amount of \$31,235.42.

14. **AMENDED SUBSEQUENT DEVELOPMENT REIMBURSEMENT AGREEMENT WITH LATALA FAMILY LP FOR LANDS OF LATALA**
Action: Approved Amended Subsequent Development Reimbursement Agreement and Authorized the City Manager to Execute the Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.
16. **EMERGENCY PURCHASE BY PURCHASING OFFICER**
Action: Filed the Purchasing Officer's Report Concerning the Necessity of a Prior Emergency Expenditure for the Aquatics Center.
18. **ADOPT ORDINANCE NO. 1810, NEW SERIES**
*Action: Waived the Reading, and Adopted Ordinance No. 1810, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR 955 OAK PARK DRIVE IN THE EL TORO OAKS RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE WEST SIDE OF DEWITT AVENUE, APPROXIMATELY 100 FEET SOUTH OF WEST DUNNE AVENUE, TO ALLOW FOR SECOND STORY REAR FRENCH DOORS WITH A WALLED PLATFORM CONSTRUCTED TO A DEPTH NO GREATER THAN REQUIRED BY BUILDING CODE TO ALLOW THE FRENCH DOORS TO FULLY OPEN. (APN 773-08-043)(ZAA-00-14: OAK PARK – GENTILE)***

Redevelopment Agency Action

CONSENT CALENDAR:

- Action: On a motion by Agency Member Sellers and seconded by Vice-Chair Carr, the Redevelopment Agency Board, on a 4-0 vote with Agency Member Lee absent, Approved Consent Calendar Items 22-23, as follows:*
22. **AMENDMENT TO AGREEMENT WITH THE MORGAN HILL DOWNTOWN ASSOCIATION (MHDA)**
Action: Authorized Executive Director to do Everything Necessary and Appropriate to Amend the Agreement with the MHDA to Extend the Deadline to February 28, 2007 for the MHDA to Form a Property Based Improvement District (PBID) Board and Prepare the PBID Scope of Work for Agency Approval; Subject to Review and Approval by Agency Counsel.
23. **NOVEMBER 2006 FINANCE & INVESTMENT REPORT - RDA**
Action: Accepted and Filed Report.

City Council, Redevelopment Agency, and Morgan Hill Wastewater Facilities Financing Authority Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Carr, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Lee absent, **Approved** Consent Calendar Items 24 and 25 as follows:*

24. ANNUAL FINANCIAL REPORTS FOR FISCAL YEAR 2005-2006

City Council Action: ***Accepted** and **Filed** the Comprehensive Annual Financial Report and the Single Audit Report for Fiscal Year 2005-2006.*

Redevelopment Agency Action: ***Accepted** and **Filed** the Financial Statements for the Redevelopment Agency for Fiscal Year 2005-2006.*

25. JOINT REGULAR CITY COUNCIL, REGULAR REDEVELOPMENT AGENCY, AND REGULAR MORGAN HILL WASTEWATER FACILITIES FINANCING CORPORATION MEETING MINUTES OF DECEMBER 6, 2006

Action: ***Approved** the Minutes as Submitted.*

City Council Action

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Grzan, the City Council, on a 3-0 vote with Council Member Lee and Sellers absent, **Approved** Consent Calendar Items 17 and 19-21 as follows:*

17. ADOPT ORDINANCE NO. 1809, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1809, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO AMEND THE ZONING DESIGNATION FROM CO (ADMINISTRATIVE OFFICE) TO CG (GENERAL COMMERCIAL) ON A 0.93-ACRE PARCEL (APN 767-17-051) LOCATED ON THE WEST SIDE OF MONTEREY ROAD BETWEEN SPRING AND COSMO AVENUES. (ZONING AMENDMENT APPLICATION NO. ZA-06-15: MONTEREY – AZAR)***

19. ADOPT ORDINANCE NO. 1811, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1811, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 18, THE ZONING CODE BY ADDING CHAPTER 18.25 CL-R LIGHT COMMERCIAL-RESIDENTIAL ZONING DISTRICT. (ZA-06-03:CITY OF MORGAN HILL-LIGHT COMMERCIAL RESIDENTIAL ZONING DISTRICT)***

20. ADOPT ORDINANCE NO. 1812, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1812, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM CO, ADMINISTRATIVE OFFICE, TO CL-R LIGHT COMMERCIAL RESIDENTIAL ON SEVEN PARCELS TOTALING 8.82 ACRES (APNS 726-24-018 & 019, 767-17-046 & 047, 817-02 036, 037 & 051) AND AMENDING THE ZONING DESIGNATION FROM CG, GENERAL COMMERCIAL TO CL-R LIGHT COMMERCIAL RESIDENTIAL ON FIFTY SEVEN PARCELS TOTALING 34.34 ACRES (APNS 726-24-013 THRU 017 & 021, 764-13-020, 022 THRU 025 & 044 THRU 049, 766-25-001, 002, 004, 005, 767-18-002, 005, 019, 020, 021, 027, 031, 032, 035, 036, 039, 046 & 050, 817-01-002 THRU 007, 817-02-014 THRU 020 & 025, 817-03-002 THRU 010, 050 & 054) (ZA-06-03:CITY OF MORGAN HILL-LIGHT COMMERCIAL RESIDENTIAL ZONING DISTRICT)**

21. ADOPT ORDINANCE NO. 1813, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1813, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.04 DEFINITIONS OF THE MORGAN HILL MUNICIPAL CODE. (ZA-06-03:CITY OF MORGAN HILL-LIGHT COMMERCIAL RESIDENTIAL ZONING DISTRICT)**

15. REVIEW OF ABAG DRAFT REGIONAL HOUSING NEEDS ALLOCATION METHODOLOGY

Mayor Pro Tempore Carr noted that the City is periodically criticized by groups or members within the City limits of Morgan Hill about the housing mix, especially about affordable housing. He said that the Morgan Hill Unified School District is an agency that critiques the City about this issue. He suggested that this agenda item and the letter from the Mayor be sent to groups/agencies so that they can understand the State process the City has to go through that requires the City to provide a certain housing mix. He stated that the City looks at the housing mix, there is some thought put forth, and that the approval of housing in Morgan Hill is not as random as some individuals believe it is.

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Council Member Lee absent, Directed the Mayor to Send a Letter to ABAG Endorsing a Draft Allocation Methodology; Further Directing staff to find an appropriate way to send the staff report and the Mayor's ABAG Letter to other groups/agencies.*

PUBLIC COMMENT

Mayor/Chairman Tate opened the floor to public comments for items not appearing on this evening's agenda.

David Nance congratulated the elected members of the Council and stated his appreciation of their efforts. He informed the Council that he received a bill from the City of Morgan Hill last week for a self-fire inspection fee. He indicated that he is a tenant in a building and that he runs an insurance agency. He said that each year, the Fire Department conducts fire inspections, and have found no problems with the building. This year, he received a self-fire inspection form that took him approximately ½ hour to fill out. He mailed the self-fire inspection form back. He stated that he was surprised to receive a bill in the mail for \$17 for the self-fire inspection fee and questioned this fee. Upon investigation, he found out that the Fire Department does not visit all office buildings. Therefore, he did not believe fire inspections are uniform in this regard. Should the Fire Department inspect his office, there would be a \$216 inspection fee charged. He said that City staff was kind enough to forward him the resolution adopted by the Council on August 24, 2005. He learned that the reason he is being billed for the self-fire inspection fee is because it is considered to be a "special service." He said that upon review of the information provided by the City, inspections are required by law. If required by law, he did not know how this could be considered a "special service."

Mr. Nance indicated that after the passage of Proposition 13, the Oak Grove School District started to adopt these type of policies in order to recuperate monies they thought were services being provided for specific purposes that did not serve the overall spectrum of what the educational institution was supposed to be providing. He said that if these types of resolutions continue to be adopted, theoretically, just about all services provided by the police and fire departments could be considered special services specific to one individual. He stated his objection to the special service fee as it seems to be arbitrary. He did not understand why a self-inspection was required as the Fire Department may show up next year to perform an inspection and that he would be charged \$216. He questioned the constitutionality associated with this fee, and that he would be conducting more investigation with the State of California Attorney General's office on the constitutionality of the special fee. Depending on what he finds out from the Attorney General, he stated that there is always the initiative process. He recommended the Council reconsider its decision on this matter, or at least be more specific about what constitutes a special service.

Craig Van Keulen stated that due to a family event during the last Council meeting, he was not able to be present at the time everyone thanked outgoing Mayor Dennis Kennedy. He stated that he was pleased with how Mayor Kennedy led the Council over the last few years. He thanked Mayor Kennedy and the Council for its thousands of hours of time on the behalf of Morgan Hill residents/citizens. He thanked Mayor Kennedy for serving over 10-years as the Mayor for the City. He felt the City has gone in a great direction. He wished the Council good luck in its progress and efforts on behalf of the City.

No further comments were offered.

City Council and Redevelopment Agency Action

ADOPTION OF AGENDA

No modifications were offered.

City Council Action

PUBLIC HEARINGS:

26. ZONING AMENDMENT, ZA-06-10/DEVELOPMENT AGREEMENT, DA-05-09: DEL MONTTE-GIOVANI – *Ordinance Nos. 1814 and 1815, New Series*

Director of Community Development Molloy Previsich presented the staff report on a request for a Residential Planned Development (RPD) overlay zoning district, precise development plan, and a development agreement for a 6-unit residential development. She informed the Council that the Planning Commission conducted a public hearing on December 12, 2006, and is recommending Council approval of the mitigated Negative Declaration, adoption of the Mitigation Monitoring and Reporting Program, adoption of the RPD overlay zoning district and precise development plan, and approval of the project's development agreement. She indicated that the Council has a supplemental report before it this evening that would add one additional clause to the development agreement to better address provisions for ongoing operation and maintenance of the detention pond.

Mayor Tate opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Lee absent, Adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP).*

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Lee absent, Waived the Reading in Full of Ordinance No. 1814, New Series.*

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council Introduced Ordinance No. 1814, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT REQUEST TO REZONE A 1.08-ACRE SITE LOCATED ON THE EAST SIDE OF DEL MONTE AVENUE, APPROXIMATELY 80 FEET NORTH OF CHRISTINE LYNN DRIVE. FROM R2(3,500) TO R2(3,500)/RESIDENTIAL PLANNED DEVELOPMENT (RPD) AND TO ADOPT A PRECISE DEVELOPMENT PLAN FOR THE CONSTRUCTION OF SIX MULTI-FAMILY HOMES (APN 764-12-025)(ZA-06-10: DEL MONTE-GIOVANNI** by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Lee.*

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Lee absent, **Waived** the Reading in Full of Ordinance No. 1815, New Series.*

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1815, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMC-04-05: DEL MONTE-GIOVANNI (APN 764-12-025)(DA-05-09: DEL MONTE-GIOVANNI), adding Paragraph 14(j)(vi) to the Development Agreement regarding the ongoing operations and maintenance of the detention pond, by the following roll call vote: AYES: Carr, Grzan, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Lee.***

City Council Action

OTHER BUSINESS:

27. FRIENDS OF THE MORGAN HILL LIBRARY ART REPORT

Special Assistant to the City Manager Spier informed the Council that representatives from the Friends of the Morgan Hill Library were present to address the Council this evening. She indicated that the Council authorized the Friends of the Morgan Hill Library to fundraise, on behalf of the library project, regarding furniture, fixtures and art pieces. She stated that the Friends of the Morgan Hill Library have made a presentation to the Library Culture & Arts Commission regarding proposed art pieces as was done by the Morgan Hill Leadership - Class of 2006 who donated two art statues to the library art project. She said that the Friends of the Morgan Hill Library would like to present to the Council the proposed art projects that they will be fundraising for. She informed the Council that in attendance this evening were Carol O'Hare and Zoe Gustlin with the Friends of the Morgan Hill Library who will be making the presentation to the Council. Also, in attendance was Roseanne Macek, Community Librarian, to address the Council about any issues it may have regarding the County Library, the agency that would be adopting the art pieces.

Carol O'Hare, President of the Friends of the Morgan Hill Library, informed the Council that the Friends of the Morgan Hill Library would be presenting the art pieces that have been selected for Council approval, including the locations for art pieces that have not yet been purchased. She said that the Friends of the Morgan Hill Library is seeking Council approval to continue with the art concept.

Zoe Gustlin, chair of the Art Selection Committee, presented renderings of the Leadership Morgan Hill Class of 2006 sculpture to be located outside the library building, in front of the garden. She presented the Council with a rendering(s) of a sculpture, designed by Evelyn Davis, a local sculpture, to be located outside in the children's area. Renderings were also presented of an oak bench being constructed by Don Jensen, a local wood artist, to be located in the lobby area, as well as a landscape art concept to be located within the library to be commissioned by an artist who is well known across the country. She indicated that a hanging sculpture made from small pieces of aluminum hanging by pieces of wire is proposed behind the circulation desk. She stated that the Friends of the Morgan Hill Library is working with the artist to purchase the design at a reasonable price, if they can find someone who can make it. She informed the Council that the Friends of the Morgan Hill Library are also working on a mural to be

located at the end of the children's area; working with Gavilan College. She stated that they are also looking to locate a mural in the adult area consisting of letters and quotes in different languages in order to represent the cultures of the area in a variety of ways. She indicated that the Friends of the Morgan Hill Library are still working on a donor wall concept.

Mayor Pro Tempore Carr inquired how many art pieces completed/being contemplated are being done by local artists.

Ms. Gustlin responded that the bench and the painting are being done by local artists. She indicated that there is no local artist for the sculpture piece. She informed the Council that the Friends of the Morgan Hill Library are trying to work with San Jose State University in order to obtain local artists. However, she has not been able to contact the right individuals at the University. She stated that the Friends of the Morgan Hill Library are trying to stay as local as possible, but that they have a criteria that artists have credentials for their specific type of art work.

Council Member Grzan indicated that he is the administrator for the School of Art and Design at San Jose State University. He recommended that Ms. Gustlin contact him, and that he will steer her in the right contact direction.

Ms. O'Hare requested Council approval of the four specific art pieces and the three art concepts presented this evening. She indicated that the Friends of the Morgan Hill Library would be willing to return to the Council with the art concepts once they are finalized, and submit them for Council approval. She addressed how individuals can contribute to the Friends of the Morgan Hill Library *Beyond Books* campaign.

Mayor Tate opened the floor to public comment. No comments were offered.

Council Member Sellers recommended the Council approve the four specific art pieces presented this evening. He further recommended that the Friends of the Morgan Hill Library return with the art concepts so that they can be reviewed and that the Friends of the Morgan Hill Library can continue to receive praise for the good work taking place.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Lee absent, **Approved** the four specific art pieces presented this evening; **Directing** the Friends of the Morgan Hill Library to return to the Council with the art concepts for Council review and approval.*

28. ASSISTANCE TO BUSINESSES IMPACTED BY THE CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE DOWNTOWN AREA

Council Member Sellers, Chairman of the Community & Economic Development Committee, indicated that one of the main reasons for undertaking the reconstruction of Depot Avenue is to improve the business climate, and to make the area more attractive for businesses and the community. He noted that the businesses along Depot Avenue have been severely impacted. He informed the Council that the Committee reviewed this situation and realized the City should be looking at this more broadly. He indicated that the Committee recommended a policy be drafted that would address potential future impacts. Therefore, the Committee worked through a draft policy; meeting with the Downtown

Association and affected businesses. He indicated that a follow-up meeting was held with the Downtown Association Board on Tuesday that resulted in a draft policy for Council consideration this evening. He stated that fundamentally, the draft policy would give businesses that are impacted the ability to come to the City and request reimbursement for their lease agreement up to 50% with a cap, should businesses be directly impacted by construction. He clarified that the proposed policy would assist businesses during those periods when there would be direct impacts associated with individuals being able to access the businesses. He noted that the community is in the verge of losing Gallery Morgan Hill, one of the longest standing businesses in the downtown area; a cooperative business that has significant positive impacts to the broader community. He stated that the Committee did not want to lose this business, and that it wanted to come up with a policy that would address the overall issues; thus, the policy before the Council this evening.

Mayor Tate opened the floor to public comment.

Theresa Kiernan informed the Council that the Downtown Association Board looked at this issue, and is very concerned about the fact that Morgan Hill will be losing Gallery Morgan Hill as well as the potential for other businesses to close their doors. She noted that the City is in the process of improving the downtown in order to attract community members to support local businesses as well as to attract those outside the community. She indicated that there is nothing worse than having businesses that have been in the community for a long time close their doors based on temporary road construction. She stated that businesses are having challenges surviving during the temporary road construction. She encouraged the Council to move forward with this particular proposal and support the businesses in the downtown as they face challenges during the public improvement process.

Dan Ehrler said that while the Chamber the Commerce has not been able to address this specific issue, it supports an economically viable community. He stated that it is the Chamber of Commerce's hope that the Council will give the request being made by the Downtown Association favorable consideration. He acknowledged that the construction taking place will result in a large benefit to the area, but that there is a challenge/struggle for businesses impacted by construction. He requested the Council assist businesses be sustainable during the construction period so that they can continue as viable businesses.

No further comments were offered.

Council Member Grzan inquired why it is being recommended that the policy be funded from the General fund as opposed to Redevelopment Agency funding.

Council Member Sellers responded that the City was precluded from using Redevelopment Agency funds for the purposes outlined.

Director of Business Assistance & Housing Services Toy indicated that Redevelopment Agency law does not give authority to use funds for this purpose.

Council Member Sellers noted that one of the Council policies stipulates that general fund reserves can be used to promote economic development. He indicated that the Committee believes it would be appropriate use of the General fund.

City Attorney Kern clarified that in order to use Redevelopment Agency funds, you have to refer to the Health & Safety Code statutes, and determine whether or not there is authority for these funds to be used as opposed to City government funding. She stated that there is nothing in Redevelopment law that allows funding to be used for work in progress, or fits this situation. Therefore, funding for this proposed program will need to come from the General fund.

Council Member Grzan stated that it was his understanding that based upon the impacts of a project owners can apply for relief, of some sort, from the City and receive reimbursement for costs up to a maximum of \$5,000. He inquired whether staff has an idea of the potential impacts associated with this policy, in terms of total amounts.

Mr. Toy said that the report indicates that once the Council receives a recommendation from the Community & Economic Development Committee, the Council would designate a project as having an impact. The Committee would identify the block that would be impacted. At that time, staff could evaluate how many retail/restaurants are located on the block that could be eligible for this program. Based on the number of businesses that could be eligible, staff would come up with an estimate on the maximum amount of funds available. He stated that this would be the time the Council would be asked to allocate funding for the program. He said there are two possible businesses located on Depot Street that could be impacted; resulting in \$10,000 in assistance, should the policy/program be adopted.

Council Member Grzan inquired whether the policy being considered could be applied to other areas in the city.

Mr. Toy responded that the policy is being proposed in the downtown at this time.

Council Member Sellers indicated that the program could be expanded. He explained that the Committee wanted to make sure the Council is the entity that would determine eligible areas. Therefore, the Council could state that there is another area/street that the policy could be applied to. He clarified that the policy states that a business has to have a direct impact such as having limited or unavailable ingress/egress which is the case on Depot Street. He said that the Committee encourages the Council's ability to control costs, and that the policy would be limited to retail businesses and restaurants. He indicated that there could be impacts to non retail businesses and that the Committee did not want to limit assistance to these businesses. He noted that the City is trying to encourage small businesses in the downtown area. He stated that the Committee did not want to preclude the Council from considering applying this policy in other areas of town and that this can be considered in the future.

Council Member Grzan stated that he would like to make sure the City provides resources to every retail business in the city. Should there be another area in the city where construction is taking place, he would like to have the ability to consider assistance to businesses in those areas as well.

Mayor Pro Tempore Carr clarified that the Community & Economic Development Committee is presenting a report to the Council for consideration about a proposal brought to the table by Council Member Sellers. The Committee is requesting Council direction regarding further pursuing the idea. He indicated that the Committee is not recommending approval of the program this evening, but is requesting authority to continue to work on the program. He stated that he has several questions about the program. He did not know how it would be demonstrated that the need a business has is as a result of construction work, and not because it is a floundering business or a business that was not working very

well. The question is whether this is the best way to assist a business while an area is under construction, or are there other ways to assist (e.g., marketing, advertising, signage, etc.) that would be better use of the City's time. He felt that the Committee should spend more time in figuring out how to implement the program. He agreed with Council Member Grzan that should there be impacts to other retail/restaurant businesses in other parts of the city as a result of construction work initiated by the City, the City should consider whether the program should be extended to those areas. He noted that most of the construction work conducted outside of the downtown is the result of a new business and/or development going in, and not proactive work being conducted by the City. He indicated that the construction taking place in the downtown is being initiated by the City to improve the infrastructure of the downtown because it is the belief that it will ultimately result in economic development. He did not believe a business should be eligible for a program that is a result of their construction/prosperity. He felt that this is one of the criteria the Committee should be considering as it puts a program together for Council consideration.

Council Member Grzan recommended the Committee look at how other businesses can benefit from a proposed policy. He felt that it would be a good idea to provide relief to the business community. He would like to make sure the City is fair in the process, and make other businesses eligible if the conditions are the same.

Mayor Tate stated that should the City make the program subjective with it being a Council decision, the Council will bend over backwards to be fair to every business. He felt the City would be better off placing more effort at the front end to make the program restrictive. A criteria could be blockage to the entry of a business. Thought needs to be given to what activities the City can spend redevelopment agency monies on. He noted that the City spent redevelopment dollars on activities where the City learned it did not do as well as it could have on Depot Street. The City could provide better signage, more advertisement, conduct a City initiated campaign (e.g., support the vitality of the downtown; everyone to get behind the merchants and support them). He recommended more effort be given to advertising/marketing. He did not want to state that the City does not want to assist merchants in need of assistance, but recommended the Council consider an iron tight program to avoid everyone coming before the Council requesting assistance.

Council Member Sellers indicated that thought for the program came about when he was approached by Gallery Morgan Hill. He requested information from Gallery Morgan Hill that quantified the impacts associated with construction. He said that this is not just the City's problem, but that of the property owners. He noted that the property owners would benefit long term from the improvements. It was felt that the Downtown Association should be providing assistance to businesses as it is in their best interest to keep businesses successful during the construction period.

Action: *The Council **Considered** the proposal by Council Member Sellers, and **Offered** the above comments to the Community & Economic Development Committee.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

29. INNOVATIVE APPROACH FOR THE REDUCTION OF TRAFFIC AND SEWER IMPACT FEES

Business Assistance and Housing Services Director Toy presented the staff report; indicating that staff is offering an innovating approach to reducing traffic and sewer impact fees. He stated that staff is recommending that the Redevelopment Agency pay for projects traffic impact fees (\$37 million). Staff proposes reduction of sewer impacts fees within the project area. Staff proposes that the Agency pay for the immediate expansion of the wastewater treatment plant. He clarified that projects located outside the project area would continue to pay their fair share of sewer impact fees. He indicated that the Council/Agency is not being requested to prioritize projects at this time, but would be committing funds to projects. He addressed the findings that would need to be made, and stated that this approach is consistent with the policy adopted by the Agency Board in October 2006 relating to the Agency conducting public improvements to reduce the cost of development in the project area. It is being recommended that the Council/Agency Board direct staff to continue to pursue this concept. Staff would report to the Council/Agency Board in January 2007, at a public hearing, with all the appropriate resolutions and findings. He clarified that the funding source would come from the Redevelopment Agency. He informed the Council/Agency Board that the City would be able to collect \$333 million over the life of the plan based on the latest Redevelopment Plan amendment.

Council/Agency Member Grzan inquired how the proposal before the Council/Agency Board fits in with all the other items the Agency proposes to pursue.

Mr. Toy responded that there would be a process with the update of the five year implementation plan as well as the opportunity for the Agency to construct any projects with bonding. He said that there has to be a process decided upon prior to implementing a project. He said that it would be up to the Council/Agency Board to determine when the proposal before it is to occur and be developed. He said that pursuing this proposal would commit the City to \$37 million in traffic improvements and up to \$20 million for sewer improvements.

Mayor/Chair Tate clarified that the Council/Agency Board is not authorizing the expenditure this evening, but would be considering pursuing the concept.

Mr. Toy wanted to make sure that it is understood that there would be a commitment made in January 2007, should the Council/Agency Board decide to pursue this concept. In response to Mayor Pro Tempore/Vice Chair Carr's question, Mr. Toy responded that a developer would realize a benefit at the time they pull a building permit.

City Manager/Executive Director Tewes said that with the recommendation to proceed this evening, a public hearing is to be held in January 2007 with specific findings to be made. Upon Council/Agency Board approval of the proposal, the fees would be revised the day following adoption.

Mayor/Chairman Tate opened the floor to public comment.

Dan Ehrler stated that as a partner on the Economic Development Partnership, the Chamber of Commerce wholeheartedly supports the recommended action being proposed by staff this evening. He said that the Chamber of Commerce looks forward to participating in the process. He felt that supporting the findings would be important and that the burden would be placed on them to develop them. He commended staff for bringing this proposal forward.

Ralph Lyle, representing himself, expressed concern with the \$37 million traffic impact fee based on the construction index because it does not include land cost escalation. He felt that the \$37 million is considerably understated because land costs have gone up substantially. He noted that there has been enough development in the city occurring over the past 4-5 years that was not anticipated to occur. Therefore, there are a number of projects that are not included in the list that may come into play. He felt that additional work needs to be done to justify the amount that is needed in the city. He noted that the staff report indicates that implementing this program would result in projects being completed sooner. He felt that the soonest projects would get completed is when the fees are put into place. He felt that it is wrong to proceed with this program without conducting more work to understand the costs. He indicated that some of the projects on the list would also have an economic benefit to the City. Therefore, the sooner the projects are completed, the better. By making Butterfield go through to the south, the City would open a lot of land to development that would otherwise not occur. He noted that the Redevelopment Agency does not have enough money without bonding; indicating that he does not like bonding because you end up getting less funding. He felt that the City needs to do a lot more work before it steps up to forgive this much in fees.

No further comments were offered.

City Manager/Executive Director Tewes said that the list of projects added up to \$60 million based on 2002 cost estimates. He stated that this was the basis for the fees established. He noted that the Council annually adjusts the fees by the construction cost index, not the cost of the project. He stated that it has also been the City's practice, every five years or so, to update the analysis of the cost of the project. He indicated that it is about time for the City to update the fee analysis. Whatever the costs, he stated that certain named projects are to be funded by Redevelopment Agency funds. He said that all of the development that has occurred, but one, have been consistent with the 2001 general plan. He indicated that the general plan was subsequently amended for that development. He said that it is the general plan that establishes the traffic congestion standard that leads to a list of projects. He stated that it is time to start thinking about updating the general plan. He indicated that staff's proposal is straight forward relating to finding alternative sources for projects that would otherwise be paid for by impact fees as required by the general plan. Staff acknowledges that there needs to be updates to the cost estimates, and, at some point, an update to the general plan as well. He stated that you cannot have it both ways: collect fees and use another alternative funding source.

Council/Agency Member Sellers stated that he was supportive of the concept. He indicated that he is not as adverse, necessarily, to bond funding because it may save money. He would like to be able to quantify the savings associated with bond funding. He felt that this is a significant economic development opportunity, and that he would like to quantify this relative to other communities. He recommended projects be looked at based on the economic benefits they may provide; giving the project a higher priority. He felt the City should be able to quantify the economic benefits associated with this proposal.

Action: *Council/Agency Member Sellers made a motion, seconded by Mayor Pro Tempore/Vice-chair Carr, to **Direct** Staff to **Prepare** the Appropriate Resolutions and Findings to Implement this Concept for Consideration at a Public Hearing to be Scheduled at a January 2007 City Council and Redevelopment Agency Meeting.*

Council/Agency Member Grzan stated that he would like to see the entire pool of projects and how this proposal would relate to them. He would like to know how this proposal would affect other potential projects. He stated that he would not be in favor of establishing the fees the next day as he would like to be able to let everyone know that the City has some economic incentives in Morgan Hill. He recommended that the City market this program and attract businesses. He would like to make sure that redevelopment dollars are being used for economic development, and wherever possible, quantify this in order to determine the investment of return. He indicated that he would like more studies, and more information provided before he is willing to move forward.

Mayor Pro Tempore/Vice-chair Carr stated that he is enthusiastic about moving forward with the proposal this year. He noted that the City has done a lot of projects/programs with regards to economic development over the last couple years. He said that the installation of infrastructures is what cities do best. He said that this is where the Council/Agency Board has always stated that the extension of the RDA would be concentrated. He noted that the number one priority has always been infrastructure improvements, and that this proposal is in line with what the Council/Agency Board stated it would be doing. He said that the City hears complaints about high fees. He felt that by completing improvements early, in the right way, would be one way to reduce these impact fees. He would express concern about delaying this action as it would impact economic development; delaying businesses coming to Morgan Hill. He agreed that there remains several questions to be answered, and items that need to be looked at. However, the quicker the City moves forward with this proposal, the better it will be as an economic development tool.

Mayor/Chairman Tate concurred with the comments expressed by Mayor Pro Tempore/Vice-chair Carr. He understands wanting to see the entire picture, and felt the Council/Agency Board can do so in short order. By discussing the proposal this evening, the City may be placing some projects on hold. He felt the City needs to get these projects moving forward. He stated that the Council/Agency Board needs to get answers to the questions in short order to promote economic development.

Vote: *The motion carried 4-0 with Council/Agency Member Lee absent.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

RECONVENE TO CLOSED SESSION

Mayor/Chairman Tate adjourned the meeting to Closed Session at 8:31 p.m.

RECONVENE

Mayor/Chairman Tate reconvened the meeting at 9:13 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Kern announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Tate adjourned the meeting at 9:15 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY